IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.17672 of 2007
AMIT BAHADUR
Versus
STATE OF BIHAR & ANR
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3. 18.9.2008. Heard the learned counsel for the petitioner as also the learned A.P.P. for the State.

The grievance of the petitioner is against the order dated 23.9.2006 passed by Sri T. Yadav, Judicial Magistrate, Ist Class, Ara, in Complaint Case No.1261(C) of 2006 , whereby he has taken cognizance against the petitioner of the offences under Sections 420 and 406 I.P.C.

It has been submitted on behalf of the petitioner that he is innocent and he in no way is responsible for whatever has been happened to the complainant.

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The case of the complainant is that he used to do business of sale and purchase through the petitioner who was sub-broker and in course of such sale and purchase he issued a cheque of Rs.29,250 drawn on Syndicate Bank , Ara on 11.11.2003 for purchase of 1500 shares of Chambal Fertilizer which the petitioner purchased at Rs.28,961.95/- and handed over the same to the complainant. It is further alleged that the complainant sold his same shares on 30.11.2004 to Asit C. Mehta through the petitioner for the value of RS.35795.83/- and in lieu thereof he requested the petitioner to purchase 400 shares of National Thermal which was purchased through the petitioner from Asit C. Mehta on 24.12.2004 for a sum of Rs.33,980.62/-. The balance amount of RS.1815/- was paid by the petitioner to the complainant by cheque. The business of sale and purchase was continued by the complainant and the

petitioner and then it appears that several differences arose and the petitioner became a defaulter in paying the amount to the complainant.

It appears that he learned Magistrate after holding an inquiry under Section 202 Cr.P.C. had found a prima facie case under Sections 420 and 406 I.P.C. appears to have been made out against the petitioner.

It is by now well settled by a catena of decisions both of the Apex Court as also this Court that since the object of the inquiry under Section 202 Cr.P.C. is to ascertain whether the allegations made in the complaint are intrinsically true, the Magistrate acting under Section 203 Cr.P.C. has to satisfy himself that there is sufficient ground for proceeding. In order to come to the conclusion he is entitled to consider the evidence taken by him or recorded in an inquiry under Section 202 Cr.P.C. He is not entitled to rely upon any material besides this. Where there is prima facie evidence, even though an accused may have a plausible defence that the offence is committed by some other person, the matter has to be left to be decided by the appropriate forum at the appropriate stage and issue of process cannot be refused. Gainful reference may be made to the case of Chandradeo Vs.Prakash Singh (AIR 1963 SC 1430).

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In that view of the matter, I find no merit in this application which is accordingly dismissed.

(Abhijit Sinha,J)

P.S.